

152nd GENERAL ASSEMBLY

BILL NO.

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2803, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2803. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them, except where the context clearly indicates a different meaning;

- (1) “Active roster” shall mean the record of members, associate members, permittees and holders of a certificate of authorization.
- (2) “Adjunct member” shall mean an adjunct member of the Association, as defined in § 2806(d) of this title.
- (3) “Administrative order” means an order issued by an investigating committee, with the prior approval of the Council pursuant to § 2824(b)(1)g.1. of this title, which attempts to resolve a complaint of a violation under § 2823 of this title. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service.
- (4) “Affiliate member” shall mean an affiliate member of the Association, as defined in § 2806(c) of this title.
- (5) “Applicant” shall mean a person who applies to become licensed as a professional engineer, applies to become certified as engineer intern, applies to become an adjunct member of the association, or applies for a certificate of authorization or permit.

(6) “Associate member” shall mean an associate member of the Association, as defined in § 2806(b) of this title.

(7) “Association” shall mean the Delaware Association of Professional Engineers.

(8) “Bylaw” shall mean a bylaw of the Association.

(9) “Certificate of authorization” shall mean an authorization issued by the Council to engage in the practice of engineering.

(10) “Committee” shall mean a committee appointed by the Council.

(11) “Consent order” means a voluntary agreement between parties attempting resolution of a complaint of a violation under § 2823 of this title or a complaint of unlicensed practice under § 2825 of this title. To become a final order, a consent order must be approved by Council pursuant to § 2824(b)(1)g.2. of this title.

(12) “Continuing professional competency” shall mean and refer to compliance with or satisfaction of a published set of guidelines and requirements for the maintenance of professional competency in the practice of engineering.

(13) “Council” shall mean the Council of the Association.

(14) “Engineer” shall mean a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by an engineering education, through graduation with a baccalaureate degree from a Council-approved 4-year educational program in engineering, in engineering technology or in science related to engineering, is qualified to begin the path to licensure.

(15) “Engineering corporations or partnerships” are corporations or partnerships who practice engineering to provide engineering services to the public.

(16) “Engineer intern” shall mean a person certified as an engineer intern by the Council.

(17) “Examination” shall mean any qualifying examination or examinations required by this chapter.

(18) “Hearing committee” means a committee of Council members to which the Council has delegated authority to adjudicate a complaint of a violation under § 2823 of this title or allegations of unlicensed practice under § 2825 of this title.

( ) “Incompetence” shall mean the failure to exercise appropriate professional judgment or the failure to utilize skill to a degree which shows a lack of general competence.

(19) “Investigating committee” means a committee of the Council to which the Council has delegated authority to investigate a complaint of a violation under § 2823 of this title or allegations of unlicensed practice under § 2825 of this title.

(20) “Licensed” means licensure as a professional engineer under this chapter.

(21) “Licensee” shall mean a person licensed as a professional engineer under this chapter.

(22) “Member” shall mean a member of the Association, as defined in § 2806(a) of this title.

( ) “Misconduct” shall mean that conduct which is recognized to be unsafe or improper by the ethical and competent members of the profession. The term also includes, but is not limited to, general conduct that is dishonorable or unprofessional. ~~and that is not addressed in other categories within these guidelines, and includes acts prohibited by policies expressed in legislation.~~

( ) “Negligence” shall mean an act or omission that deviates from accepted standards of practice or standard of care in the engineering community

(23) “Practice of engineering” or “to practice engineering” includes any professional service performed for the general public such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation in connection with any public or private buildings, structures, utilities, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved when such professional service requires the application of engineering principles and data, but it does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, neither does it include engineering services performed by an employee of a firm or corporation that does not offer professional engineering services to the general public.

(24) “Professional engineer” shall mean a person who has been duly licensed as a professional engineer by the Council.

(25) “Responsible charge” means a professional engineer’s supervision of, control over, and possession of detailed professional knowledge of an engineering work. A professional engineer is only considered to be in responsible charge of an engineering work if the professional engineer makes independent professional decisions regarding the engineering work without requiring instruction or approval from another authority and maintains control over those decisions by the professional engineer’s physical presence at the location where the engineering work is performed or by electronic communication with the individual executing the engineering work.

(26) “Retired member” shall mean a person who has elected to claim retired status as defined in § 2806(g) of this title.

(27) “Substantially related” shall mean the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of engineering.

( ) “Successor professional engineer” shall mean a professional engineer as defined in § 2803( ) of this chapter who reuses, adopts, or amends all or part of any final drawings, specifications, reports and documents involving the practice of engineering as defined in this chapter that have been previously sealed by another engineer. “Successor Professional Engineer” is not to be construed to pertain to design or engineering necessary for retrofits, repairs, components or minor elements. For these applications, the designs must stand on their own, have a clear limit of responsibility shown, otherwise known as “battery limits”, and only one engineer in responsible charge identified for that work.

Section 2. Amend § 2823(a)(2), Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2823. Grounds for discipline; appeals.

(a) Applicants, adjunct and affiliate members, and any person licensed under this chapter shall be subject to disciplinary penalties set forth in § 2824(c) of this title, if, after a hearing, the person is found to violate any of the following:

(2) Any negligence, gross negligence, pattern of negligence, incompetence, or misconduct in the practice of engineering;

Section 3. Amend § 2830(a), Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2830. Dating, signing and sealing.

(a) All final drawings, ~~specifications~~ specifications, reports and documents involving the practice of engineering as defined in this chapter when issued or filed for public record shall be dated and bear the signature and seal of the licensee or licensees who prepared or approved them.

Section 4. Amend Chapter 28, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2832 Successor professional engineer's reuse or adoption of the work of another engineer.

(a) A successor professional engineer seeking to reuse, adopt, or amend all or part of any final drawings, specifications, reports and documents involving the practice of engineering as defined in this chapter that were previously signed and sealed by another engineer shall complete all of the following:

(1) Date, sign, and seal the final drawings, specifications, reports and documents involving the practice of engineering as defined in this chapter in compliance with § 2830 of this chapter.

(2) Certify in writing on the final drawings, specifications, report or documents that the successor professional engineer is adopting the underlying engineering work of the preceding engineer as the successor professional engineer's own and has performed the necessary due diligence to verify that the proposed changes, revisions, or amendments do not impact the existing design outside of the changes, revisions, or amendments made by the successor professional engineer.

(3) Remove, or cause to be removed, the signature and seal of the preceding engineer from the final drawings, specifications, reports and documents.

(4) Provide reasonable notice by certified mail or other verifiable means to the preceding engineer, their successors, or assigns of the successor professional

engineer's intention to reuse, adopt, or amend all or part of the preceding engineer's work, however, the preceding engineer's approval is not required for the successor professional engineer to adopt the preceding engineer's sealed work as his or her own pursuant to § 2832(a)(2).

(b) Failure to comply with any part of this section is misconduct and shall be grounds for discipline pursuant to § 2823 of this chapter.

(c) A professional engineer's reliance upon and legal use of another professional engineer's work in the normal course of providing original service is not the reuse or adoption of the other professional engineer's work as set forth in this section and the engineer relying upon such work is not a "successor professional engineer" as defined in this chapter.

(d) This section does not impact, or cause the transfer of, any contractual right, property right, intellectual property right, or other right that the preceding professional engineer may have in the original engineering work.

Section 5. This Act takes effect 1 year after enactment.

### SYNOPSIS

This Act modifies Section 2803 to add definitions for negligence, misconduct and incompetence. These new definitions will provide greater clarity and guidance for the Council of the Delaware Association of Professional Engineers in determining whether a licensee is subject to discipline. Further, Section 2823 has been amended to add "negligence" and "pattern of negligence" as grounds for discipline. These changes will ensure that discipline is imposed for conduct that poses a risk to the public. This Act adds a definition for "successor professional engineer" and a new Section 2832 to delineate the acceptable parameters for a successor engineer's reuse or adoption of work performed by another engineer. This Act also specifies that "reports", as well as drawings, specifications and documents, when issued or filed for public record, must be dated, signed and sealed. These revisions will both inform licensees of the permissible use of another engineer's work and ensure that the recipient of services can identify the responsible engineer.